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WASHINGTON, D.C. 20503

GENERAL COUNSEL

August 6, 1976

Honorable George Bush
Director
Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Bush:

Herewith, in accordance with the provisions of Executive Order No. 11030, as amended, is a proposed Executive order entitled "Suitability Requirements for Government Employment."

This proposed order, along with the enclosed summary and analysis, was submitted by the Domestic Council Committee on the Right of Privacy.

The draft order rests on two premises. First, for the vast majority of Federal positions, the Executive Branch does not need, and therefore should not collect, extensive background and other kinds of personal information. It indicates that the government's interest in what the order calls "general standard positions" is to assure that it hires and retains competent employees. In these positions the chance that employees will deliberately or inadvertently pose a significant danger to a national interest are so marginal that privacy and cost concerns demand that the government collect only enough personal information to make appropriate personnel and competency judgments. The proposed order establishes strict limits on investigative scope and methods and includes important new rights of privacy, notice and due process.

In its second premise, the proposed order reflects the belief that a select number of Federal positions involve activities that are extraordinarily sensitive and critical to the Nation's welfare. For these positions the public runs a significant risk that incumbents can deliberately

or inadvertently do substantial damage to critical national interests. In what the order calls "positions of special trust" the government not only has an interest in its employees' competence, but also in a complete range of personal attributes, including emotional and intellectual stability, trustworthiness and unswerving allegiance to the Nation. This proposed order strengthens Executive Branch capability to collect and use detailed personal information to make employment, retention and promotion decisions about individuals who fill these critical positions.

The proposed Executive order is intended to improve the ability of the Civil Service Commission in collaboration with OMB and the National Security Council to oversee operation of the system and hold participants accountable for abuses. The order establishes procedures to discourage investigations that are untimely, duplicative or mere formalities. In combination with changes in substantive standards, the system management provisions in this order should work to reduce the number of full field investigations, and ensure agency compliance with security, privacy and due process safeguards.

On behalf of the Director of the Office of Management and Budget, I would appreciate receiving your comments concerning this proposed Executive order. Comments or inquiries may be submitted by telephone to Mr. Ronald A. Kienlen (395-5600; IDS 103-5600). I will assume that you have no objection to the issuance of this proposed order if your comments have not been received by Wednesday, September 15, 1976.

Sincerely,

William M. Nichols
William M. Nichols
General Counsel

Enclosures

SUMMARY AND ANALYSIS OF THE PROPOSED ORDER BY SECTION

- Preamble: The preamble identifies the premises underlying the Order, i.e., the needs for minimum standards for Federal employment, for special standards for more sensitive positions, and for a balanced program to meet these needs in a way which respects the rights of individuals and at the same time enables the Executive Branch to meet the Nation's security and personnel suitability needs. The preamble also cites the various laws constituting the basic authority for the personnel suitability program.
- Section 1. Revocation of E.O. 10450. This is a technical requirement, revoking Executive Order 10450, the current basis of the program.
- Section 2. Definitions. Definitions of the various terms used in the Order are provided to assure greater understanding of the Order and more uniform application. The definitions relating to suitability are critical to an understanding of the purpose of the Order. Of particular significance is the fact that the concepts of trustworthiness, fitness for Federal Service, and loyalty are subsumed under the term, suitability.
- Section 3. General. Defines the purposes of the Order which are to set uniform standards and procedures for (1) making decisions regarding the employment of persons in the Federal Service, (2) granting clearance for access to classified information, (3) assuring compliance with privacy and due process requirements, and (4) assuring effective management of the program. This Section also establishes a uniform program applicable to all Departments and Agencies, including both the competitive and excepted services. While the general policies of the Civil Service Commission and this Order will apply to all agencies to the extent practicable and appropriate, exemptions are granted for such highly sensitive agencies as CIA, NSA and FBI insofar as other Executive Orders or statutes may require or authorize different procedures. This order does not intend, for example, to curtail the authority of the Director of Central Intelligence pursuant to 50 USC 403(c) to terminate any officer or employee of the agency whenever he shall deem such termination necessary or advisable in the interest of the United States.

Section 4. Applicability. Pursuant to the authority of P.L. 733 (Act of August 26, 1950), which permits the President to designate affected agencies, this Order extends the provisions of that Act beyond the Departments and Agencies specifically mentioned in the Act to apply to sensitive civilian positions anywhere in the Federal Service. This Section also relates the standards and procedures of this Order to determinations of trustworthiness, required by E.O. 11652, before individuals can be granted access to classified information. Finally, this Section seeks to unify employment and security clearance determinations by requiring a single decision for appointment to those positions involving access to information classified under E.O. 11652. It is intended that this decision relate only to the individual's general eligibility for employment or access and that it will not evaluate such factors as technical or professional qualifications or personal characteristics which are not relevant to a suitability determination under this Order but which may influence selection from among two or more candidates, decisions which must be made by others.

Section 5. Suitability Standards. This Section specifies two standards for Federal employment. The first concept is the traditional standard of efficiency of the service which must be met by all applicants for or employees of the Federal Government regardless of the sensitivity of the position. The second concept applies to General Standard Positions involving access to classified information and to Positions of Special Trust, and specifies that the employment must be "clearly consistent" with the national interest. The term, "clearly consistent", is intended to convey a positive standard for employment in positions of such sensitivity.

Section 6. Positions of Special Trust. This Section defines and prescribes certain procedures for designating Positions of Special Trust. Three basic criteria determine whether a position qualifies for this designation. First, the position must be such that any failure would affect the national interests as distinguished from those of an individual or group. Second, it must be such that any damage the individual could do would be irreparable. Third, the position must involve such independent responsibility that normal supervisory or oversight procedures cannot be counted on to prevent damage. Positions of Special Trust are subdivided into two categories, those which could affect the national security and those which, while not related to national security interests, never-

theless affect the national well-being to a substantial degree. A distinction between these two categories is essential in view of the fact that Cole v. Young held Public Law 733 to be applicable only to national security type positions. Subsection (b) of this Section specifies the criteria for designating a position as falling within either of the two categories. The criteria for national security positions are intended to define those positions which are the most sensitive from the point of view of national security interests regardless of the Department or Agency involved. It is recognized that a position requiring access to secret or confidential information (other than intelligence information) ordinarily is not so sensitive and it is intended that a position requiring such access shall not be designated a Position of Special Trust solely on that basis. The same Subsection specifies the criteria for designation of a National Welfare Position of Special Trust. Subsection (c) severely restricts the authority to designate a Position of Special Trust with the intention of limiting such designations to the absolute minimum necessary. In order to provide an accurate record of such designations, this Subsection also requires certain record keeping.

Section 7. Suitability Investigations. This Section provides guidelines for all aspects of suitability investigations.

Subsection (a) requires that an investigation be conducted before appointing an individual to any position in the Federal Service. As will be seen later in Subsections (c) and (d) below, the extent of investigation will vary according to the nature of the position.

Subsection (b), in keeping with one of the basic objectives of this Order, specifies certain limits on what aspects of an individual's background may be investigated. This Subsection includes the standards of the Privacy Act of 1974 relating to relevance, necessity, timeliness, and accuracy. It recognizes that some aspects of an individual's life are so personal that they may not properly be inquired about unless there is some genuine relationship to the standards and criteria by which the individual's suitability will be determined. This Subsection also seeks to reinforce the protection of the First Amendment by defining certain traditionally protected matters as being beyond the legitimate scope of investigative interest.

Subsection (c) specifies the National Agency Check with written inquiries as being the type of investigation required for the non-sensitive General Standard Positions

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Subsection (e) permits expansion of the investigation to resolve significant adverse information, it is generally expected that the limited inquiry specified in this Subsection will constitute the minimal intrusion into the individual's privacy and at the same time adequately serve the public's interests. This Subsection also authorizes more limited inquiry for certain categories of employees when it is deemed to be in the public interest.

Subsection (d) prescribes the investigative requirements for a Position of Special Trust. In order to meet the requirement for a positive showing of suitability for a Position of Special Trust, it is clear that considerably more information about the individual will be required in order to permit a determination of suitability for such a position. The scope of investigation prescribed by this Subsection is intended to serve as a standard for the entire Federal Government, one objective being to facilitate the acceptance of each agency's investigations and suitability determinations by all other agencies. It is recognized, however, that for some agencies or for some positions within an agency special investigative coverage may be required and the Subsection provides for agreement to that effect under the general oversight of the Civil Service Commission. In order to reduce unnecessary investigation, this Subsection also provides that once an individual has been investigated for a Position of Special Trust and has thereafter completed five years of satisfactory, continuous employment in a Position of Special Trust, further background investigation, other than the routine five-year reinvestigation required by Subsection (j), shall not be required. This Subsection also recognizes that there may be extraordinary circumstances in which an individual must be appointed to a Position of Special Trust prior to completion of the background investigation and the Order provides for a carefully defined procedure to be followed in such instances, including a requirement that the investigation be completed within ninety days.

Subsection (e) provides for the expansion of the minimum scope of an inquiry or investigation whenever circumstances indicate that such expansion is necessary in order to acquire the information needed to make an appropriate suitability determination. This Subsection also requires that, in the interest of both accuracy and fair play, a personal interview with the subject be included as a

personnel investigative procedure whenever necessary to clarify or resolve potentially significant adverse information. Finally, this Subsection requires that any information falling within the purview of the FBI's jurisdiction be referred to that agency.

Subsection (f) provides detailed guidelines on the procedures to be observed in the routine personnel investigations conducted under this program. Subsection (1) specifies that, to the extent practicable, necessary information should be acquired directly from the individual. This Subsection recognizes, however, that other sources will also have to be contacted and, in order to inform both the public and the potential sources involved, it specifies some of the principal sources which may be included. Subsection (2) specifies the details which must be included in the information made available to the individual prior to the initiation of an investigation. Some of these details are required by the Privacy Act of 1974 and others, essentially a description of the investigative procedure, are added in the interest of fairness. Subsection (3) recognizes the individual's obligations in the investigative procedure and specifies certain kinds of information he or she must provide. Subsection (4) imposes certain limitations on the procedures and techniques which may be used in the routine personnel investigations conducted under this program. For the most part, these strictures are taken from the current Federal Personnel Manual but a few are added in order to comply with the spirit of the Privacy Act of 1974.

Subsection (g) continues the current procedure by which the Civil Service Commission is the agency primarily charged with the responsibility for suitability investigations, except for those agencies which may be required by law to conduct their own personnel investigations or which have agreed with the Civil Service Commission to do so.

Subsection (h) authorizes the Civil Service Commission to provide personnel investigative services for government agencies other than those of the Executive Branch.

Subsection (i) requires all agencies to give full faith and credit to the work of other agencies which may have previously investigated the same individual. This Subsection prohibits an agency from redoing the investigative work of an earlier report. The intent is to avoid

duplication of investigative work. If an earlier investigation did not include sufficient scope of coverage to meet current needs or if a particular source can be expected to have more recent knowledge of an individual, then there is no objection to supplementing an earlier investigation.

Subsection (j) recognizes that some Positions of Special Trust are so sensitive that the head of the department or agency should have the discretion to require periodic reinvestigation to determine that the individual continues to meet the standards and criteria for such position. It is not intended that this procedure be applied to General Standard Positions nor is it intended that the reinvestigation duplicate work previously accomplished. The Subsection specifies the maximum data to be acquired routinely and prescribes that each situation be reviewed on a case-by-case basis to determine what further investigative action may be appropriate to assure that the individual does continue to meet the standards. It is the intent of this Subsection to establish a uniform approach to the matter of reinvestigation. This Subsection finally defines the circumstances under which an investigation will be required of a former employee who has applied for reemployment.

Section 8. Adjudication. This Section seeks to assure a greater degree of uniformity in the administration of the personnel security program by defining in some detail the objectives of the adjudication process and procedures to be followed in making decisions. The Order recognizes that any adverse decision must be based on some rational connection between the facts of the individual's conduct or character and the pertinent standards as spelled out in Section 5. Where the conduct is of such a nature that the "nexus" is obvious, such as the use of a false identity, specific patterns of behavior are cited among the reasons for disqualification. More often, however, in order to avoid reliance on arbitrary or "per se" rules, the disqualification criteria are expressed in terms which include the reason for the individual's ineligibility, leaving it to the trained adjudicator to determine whether the facts of the individual case, taking into consideration the various factors mentioned in the Order, conform with the particular standard and criteria involved. Sexual misconduct, for example, including homosexual behavior, may be irrelevant under certain circumstances or with respect to some kinds of position or it may be highly relevant under other circumstances or with regard to more sensitive positions.

Subsection (c), in order to meet the objections of recent court decisions and to assure fairness and reasonableness in making suitability determinations, specifies in detail the various factors to be considered or, as the case may be, not to be considered in weighing evidence. Underlying all of these factors is the fundamental concept that the adjudication is an effort to assess the probability of the individual's future conduct on the basis of past conduct or personal characteristic. The enumeration of specific factors to be considered is intended to assure the relevance and accuracy of any such decision. Subsection (3) cites two additional evidentiary factors concerning Positions of Special Trust. The first is based on the premise that the individual is obligated to facilitate the process of investigation and adjudication. The second factor constitutes an official commitment by the Federal Government that the employee who has become involved in a situation which could be exploited by a foreign power and who reports the matter, shall be dealt with sympathetically. The objective is to prevent or to minimize further damage to the national interest by encouraging the individual to come forward as soon as he realizes the nature of his situation rather than to risk violating the law or exposing the national security interests to unnecessary hazard by attempting to hide his indiscretion. Clearly the Federal Government cannot promise that it will overlook a violation of law or completely ignore the circumstances of the individual's behavior. It is simply the intent of this Subsection to make a genuine and credible offer of as sympathetic a consideration of such a situation as circumstances allow. Subsection (4) cites two factors that should not be considered in making a suitability determination. The first, by forbidding the use of incomplete arrest data, requires that any criminal record be as accurate and complete as possible before it can be used. This requirement does not imply that the individual must be convicted of a crime before the information can be used in a suitability determination. It means simply that the decision may not be made solely on the basis of an arrest and that the adjudication must be based upon as much relevant detail as can be obtained. The second paragraph of this Subsection intends to reinforce the individual's rights as guaranteed by the First Amendment. It does not preclude an adverse determination on the basis of any illegal activity or conduct incompatible with the standards and criteria specified in this Order, but requires that the decision be based on the illegality or incompatibility of the behavior rather than on the mere exercise of the right.

Under this program be adjudicated expeditiously and sets a time limit of 90 days after receipt of the final report of investigation by which time a final decision must be made. It is not intended that this requirement be met if the individual voluntarily withdraws his application or resigns prior to that time.

Subsection (e) requires that when a suitability determination is made concerning any individual, he or she shall be notified of that fact. In the case of a favorable determination, the offer of employment would be sufficient notice, but it is intended that in the case of an adverse determination or when a routine re-investigation of an employee in a Position of Special Trust has been completed favorably, the individual shall be so informed.

Section 9. Due Process and Adverse Determination Procedures. This Section specifies due process safeguards for the individual when it is necessary to deny him eligibility for appointment, to deny employment or to initiate separation proceedings. The procedure recognizes that, pursuant to the Privacy Act of 1974, the individual may, with limited exceptions, have access to his file. To deal fairly with the individual, to assure accuracy and completeness of the investigative file, and to avoid subsequent misunderstandings, this Order seeks to anticipate the eventual disclosure by requiring that the investigative process include confrontation of the individual when significant adverse information is disclosed. This section requires that, before a final decision is made, the individual shall be given the opportunity to explain or refute any such information.

Section 10. Procedures Concerning Positions Which Involve National Security Interests. This Section recognizes that under the authority of Public Law 733 (the Act of August 26, 1950) the head of the agency may take certain preventive actions with regard to positions affecting the national security which he could not take with respect to other positions. Among these actions are summary suspension from employment pending termination proceedings. This Section clarifies the requirements of the Law by specifying that a termination hearing shall be initiated within 120 days of the suspension. This Section also provides for alternative preventive actions not specified in P.L. 733 but regarded as being implicitly authorized by that Act. These include suspension of the individual's access

to classified information, revocation of security clearance, and reassignment to a position which does not involve the national security interests. Parallel- ing the provisions of E.O. 10865, this Section specifies certain due process procedures to be observed in taking these actions, but authorizes the head of the agency under certain circumstances to withhold information, if necessary, in the interest of national security and to protect the identities of certain sources. When a source must be protected and is not available for cross-examination, the individual is afforded certain additional safeguards. Further, as provided for in E.O. 10865, Subsection (d) recognizes that the head of each agency ultimately is responsible for the security of the opera- tions of his agency and may deny an individual access to a specific category of classified information if, in his opinion, the security interests of the United States so require. This summary authority is limited to denial of access determinations. Except when the head of agency has statutory power of summary removal, any other preven- tive action, such as separation or reassignment to a General Standard Position, requires the due process safe- guards specified in Sections 9 or 10 of this Order.

Section 11. Reinstatement, Restoration to Duty and Reemployment. This Section seeks uniformity in the administration of the personnel suitability program by requiring consis- tency from agency to agency. It recognizes, however, that the head of each agency is the best judge of the sensitivity of the positions under his authority and this Section permits the reinstatement or reemployment of an individual previously disqualified or separated by any agency, provided the record is suitably documented. How- ever, in the event the individual is to be employed by another Department or Agency, this Section also requires the concurrence of the Civil Service Commission.

Section 12. Review of Adverse or Questionable Information Arising Subsequent to Favorable Suitability Determination. This Section requires appropriate investigation in the event of an allegation or complaint or other indication that an individual may not continue to meet the standards and criteria specified in this Order.

Section 13. Program Management. Two keys to a more effective pro- gram, missing from the recent experience of the current program, are an effective "feedback" mechanism by which to judge the program and, more importantly, greater interest at the higher levels of the Executive Branch.

This Section intends to strengthen the management of the personnel suitability program by requiring more active policy interest at a higher level within the Executive Branch, by more clearly defining the responsibilities of the individual agencies and by providing for a more effective procedure by which to evaluate the effectiveness of the program. It also specifies standards of training and qualification of personnel involved in the investigation and adjudication of cases and sets out much stricter standards for the control, use and release of investigative material, as well as specifying tighter disposal schedules than have been observed in the past.

PROPOSED EXECUTIVE ORDER NO. _____

SUITABILITY REQUIREMENTS

FOR GOVERNMENT EMPLOYMENT

WHEREAS the national interests require that all persons privileged to be employed in the Federal Government shall be reliable, of good conduct and character, and of undivided allegiance and unswerving loyalty to the United States; and

WHEREAS the national security and welfare require that only persons who have demonstrated integrity, trustworthiness and discretion of the highest order shall be employed in positions of special trust and that the selection of such employees shall be made on the basis of a comprehensive review of their suitability and qualifications to hold such positions; and

WHEREAS the American tradition that all persons should receive fair, impartial, and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the Federal Government be adjudged by standards and procedures that are consistent, uniform and comport with the individual's right of privacy:

Now, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States including section 1753 of the Revised Statutes of the United States (5 U.S.C. 1970 ed. 3301 and 3701); the Civil Service Act of 1883 (5 U.S.C. 1970 ed. 1101 et seq.); section 9A of the Act of August 2, 1939 (5 U.S.C. 1970 ed. 333 and 7311); the Act

of August 20, 1950 (5 U.S.C. 1970 et seq.) and the National Security Act of 1947 (50 U.S.C. 400 et seq.) and the President of the United States, and deeming such action necessary in the best interests of the national security and welfare and in order to protect the rights of citizens seeking employment or employed by the United States, it is hereby ordered as follows:

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April 27, 1953, as amended, is hereby revoked.

Section 2. Definitions. For the purpose of this Order, unless otherwise indicated, the following terms shall have these meanings:

Adjudication: The procedure by which a qualified officer weighs the known facts of an individual's conduct and character and considers all relevant circumstances of that conduct, prior experience in similar cases, and the general nature of the position sought or held, in order to evaluate the probability the individual will perform the duties of the position responsibly and efficiently and to balance that degree of probability against the acceptability of failure.

Adverse Determination: A decision at any level of the adjudication procedure or in subsequent hearings based upon disqualification factors set forth in Section 8 (b) of this Order which resolves a doubt against the individual with the result that he or she is denied the right to take an examination for employment, is denied appointment, is suspended from employment either with or without pay, is separated from employment, is disqualified for a Position of Special Trust, or is denied access to classified information.

Agency Head: The principal officer or administrator of a department, agency or other major organization or component of the Executive Branch established by statute or Executive Order.

Allegiance: The devotion or emotional commitment of an individual to a political entity, as customarily found in a citizen or person intending to become a citizen of such entity.

Civilian Employee: All appointive positions in the Executive Branch of the Government of the United States, except positions in the uniformed services (armed forces, commissioned corps of the Public Health Service and

Complaint Investigation: An inquiry initiated as a result of an allegation or other reasonable suspicion that an employee has committed some violation

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of law or regulation or otherwise by his or her conduct has raised a question as to whether he or she continues to meet the standards of employment for the particular position held. Such an inquiry may be conducted under the authority of any applicable law or regulation or of this Order or both.

While a complaint investigation is not a routine inquiry, the investigative procedures prescribed by this Order will be observed to the extent compatible with the integrity of the investigation, whenever its objectives include determining the individual's suitability for continued employment.

Emergency Waiver: An emergency waiver is a suspension of the investigative requirements of this Order that allows the head of a department or agency to fill a Position of Special Trust in his department or agency for up to 90 days without completion of the prescribed investigative report.

Federal Service: Federal service means employment by any Executive Branch agency including any Executive department, agency or independent establishment of the United States or any corporation wholly owned by the United States, and including the United States Postal Service and the Postal Rate Commission. It includes the terms Federal employment, government employment and any and all other terms used to describe employment status within the Executive Branch of the Federal government.

Foreign Affairs: The policies, duties and functions pertaining or giving effect to the relations between the United States and Foreign governments, groups or individuals, and international organizations.

Full Field Investigation: An investigation of an individual's background, conducted in person by qualified investigators, and including interviews with knowledgeable persons and checks of appropriate records including

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the person's life in order to assure acquisition of information necessary
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and relevant to a determination of the individual's suitability for the
position sought or held.

General Standard Positions: All positions in the Federal Service which
have not been designated Positions of Special Trust.

Investigation: An inquiry conducted by an authorized investigative organiza-
tion for the purpose of determining an individual's suitability for employment
in the Federal service as provided for in this Order.

Investigative File: The official repository of all relevant investigative
material, reports or similar information.

Investigative Record: Any item, collection, or grouping of information
authorized for inclusion in a file, indices, list, register or computer system
which relates to an investigation which contains the name, or the identifying
number, symbol or other identifying particular assigned to the individual
upon whom the investigation was conducted and which describes the nature
of the investigation, the date of the investigation and the investigatory
agency.

Loyalty: An individual's faithful and true allegiance to the U. S. and
its constitutional form of government.

National Agency Check: A record check of the Federal Bureau of Investiga-
tion's fingerprint and investigative files, the CSC security-investigations
index and where appropriate, Defense Central Investigative, Central
Intelligence and State Department indices and other agencies, as appropriate.

National Interest: All of the lawful interests of the Federal government
viewed collectively. The interests of national security and national welfare
are specific categories of the national interest.

Personnel File: The record required to be maintained by law or regulation reflecting significant information concerning any matter relating to the employment of an individual in the Executive Branch of the government.

The Official Personnel Folder is the official repository of records and reports of personnel actions effected during an employee's Federal service and the documents and papers required in connection with these actions.

Position of Special Trust: Certain positions within the Federal service which entail duties of such a sensitive nature that the misconduct, malfeasance or nonfeasance of an incumbent in any such position could reasonably be expected to result in an unacceptably adverse impact upon the national interest.

Security Determination: A determination, as required by Executive Order 11652, made by a lawfully designated authority of the Federal government, on the basis of prescribed investigation and other relevant available information, as to an individual's trustworthiness for access to classified information or material.

Sensitive Compartmented Information: All information and materials bearing special controls of the Intelligence Community (as defined in Executive Order 11905) indicating restricted handling within present and future intelligence collection programs and their end products for which community systems of compartmentation have been or will be formally established. The term does not include Restricted Data as defined in Section II, Public Law 585, Atomic Energy Act of 1954, as amended.

Significant Adverse Information: Such information, directly relating to the factors to be considered in making a suitability determination set forth in subsection 8(b) of this Order, which could reasonably be expected of itself to adversely influence a determination as to suitability or prompt the seeking of additional investigation or clarification.

Suitability: As used in this Order, suitability means the individual's fitness,

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in terms of character and integrity as distinguished from professional skills or qualifications, for the position sought or held, taking into consideration all relevant aspects of the position including its level of responsibility and sensitivity from the point of view of the national interests.

Suitability Determination: A determination made by the Civil Service Commission or the head of a department or agency of the Executive Branch or his designee, on the basis of investigation prescribed by this Order and other relevant available information, as to an individual's suitability for employment in the Federal service with respect to the appropriate suitability standard set forth in Section 5 of this Order. If the position requires access to Top Secret classified information or involves other access or special duties detailed in subsections 6(b)(ii) thru (vi) of this Order, the suitability determination obviates the requirement for a separate security determination with respect to the clearance for access to such classified information or the eligibility for assignment to such duties.

Suitability Factors: Such factors relevant to a determination as to an individual's suitability for employment in the Federal Service, under the standards required by Section 5(a) and (b), which are detailed in Subsections 8(b)(1) and (2) of this Order.

Suitability Standard: The minimum level of personal fitness and competence, prescribed by this Order, which each civilian officer or employee must meet, according to the nature of the position concerned, to be determined suitable for employment in the Federal service.

Section 3. General.

(a) Purpose of the Order - The purpose of this Order is to establish uniform standards for determining the suitability of individuals for employment in the Federal Service and for determining the eligibility of individuals

for access to information classified in accordance with Executive Order 11652. **Approved For Release 2002/06/05 : CIA-RDP79-00498A000200110038-6**

11652. The authority and responsibilities of the departments and agencies in application of the standards, to limit the collection of personal information required in determining suitability for Government employment to that which is relevant and necessary to such determination and which is consistent with the individual's basic right of privacy, and to establish effective oversight to assure that implementation of the policies set forth herein by the departments and agencies is consistent with the interests of the nation and the constitutional and civil rights of the individuals concerned.

(b) Establishment of the Federal Civilian Personnel Suitability Investigation and Adjudication Program - There shall be established a uniform Federal Civilian Personnel Suitability Investigation and Adjudication Program operating under the overall personnel policies and procedures developed by the Civil Service Commission. Such programs in the Central Intelligence Agency, National Security Agency, and the Federal Bureau of Investigation, based on procedures or requirements established by statute or other Executive Order, shall be excluded from those Civil Service Commission regulations and procedures and those provisions of this Order which conflict with such statutes or Executive Orders.

Section 4. Applicability.

Pursuant to the authority of the Act of August 26, 1950, the provisions of that Act are hereby extended to all other departments and agencies of the Federal Service to the extent that the heads of such departments and agencies shall designate Positions of Special Trust in accord with the criteria of Section 6(b)(1) of this Order. By virtue of the authority of the Constitution and the other statutes cited in the preamble to this Order, standards and criteria for other Positions of Special Trust and for Federal employment generally are hereby established. The procedures

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of this Order shall apply, as appropriate, to all civilian positions in the Executive Branch, whether of the competitive or excepted services.

The standards and criteria specified in this Order shall be used in making the determination of trustworthiness required of certain civilian personnel pursuant to Section 6A of Executive Order 11652. A determination that an individual has met the applicable standard of Section 5 of this Order shall be deemed to include a determination of trustworthiness for access to the appropriate level of information classified in accordance with Executive Order 11652.

Section 5. Suitability Standards.

The appointment or retention of each civilian officer or employee in any department or agency is contingent upon his meeting one or both of the following suitability standards according to the nature of the position for which he is being considered or in which he is serving:

(a) The overall standard for Government employment is whether an individual's appointment or retention in any position will promote the efficiency of the service and whether, in any position requiring access to classified information, such appointment or retention is clearly consistent with the national interest.

(b) The standard for appointment or retention in Positions of Special Trust is whether the individual's demonstrated integrity, trustworthiness and discretion are such that his appointment or retention in such a position would be clearly consistent with the national interest.

Section 6. Positions of Special Trust.

(a) General - Certain positions within the Federal service entail duties of such a sensitive nature that the misconduct, malfeasance or nonfeasance of an incumbent in any such position could result in an unacceptably adverse impact upon the national interest. These positions, which shall be filled by U.S. citizens only, are designated Positions of

... to the national interest that great care be exercised in the selection of individuals to fill such positions. There are two categories of Positions of Special Trust:

(1) National Security: Those activities involving access to classified information or which are directly related to military security, foreign affairs or intelligence including the protection of the government against espionage, sabotage, subversion, assassination and terrorism and any other illegal acts that adversely affect the national defense, such as those activities which are directly concerned with the protection of the Nation from internal subversion or foreign aggression.

(2) National Welfare: Those activities which are directly related to domestic order and the economic and productive strength of the Nation, including critical policy making and law enforcement positions, access to sensitive information critical to the Nation's economic or domestic interest, and access to property or installations that affect public health, safety or economic well being.

(b) Criteria For Designating Positions of Special Trust - Only those civilian positions in the Federal service which meet any of the following criteria shall be designated a Position of Special Trust:

(1) National Security Positions which:

- (i) Require access to Top Secret information;
- (ii) Require access to Sensitive Compartmented Information;
- (iii) Require access to classified information revealing intelligence sources, methods and analytical procedures;
- (iv) Require access to any classified information which is controlled by special access procedures established by the head of a department or agency;
- (v) Involve personnel investigative duties;

(vi) Offer the opportunity, through misconduct or negligence, to interfere with or impair vital

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functions of an agency critical to national security interests; or which

(vii) Allow the incumbent to make or influence suitability determinations concerning persons having the access or performing any of the duties listed in (i) through (vi) above.

Positions requiring access to information classified no higher than Secret or Confidential, other than those referred to in subsections (b)(1)(ii) through (vii) above or (2) below, shall not be designated as Positions of Special Trust solely on that basis in that the standard and criteria for employment in such positions are as prescribed in subsections 5(a) and 8(b)(1); however only United States citizens shall be employed in positions requiring access to information classified in accordance with Executive Order 11652.

(2) National Welfare Positions which:

(i) Require access to material or information, the dissemination of which is highly restricted because of its importance to the economic well-being of the Nation;

(ii) Entail responsibility for formulation or implementation of major plans and policies including enforcement of laws such that malfeasance or nonfeasance whether willful or inadvertant results in significant damage to the national interest that cannot be effectively prevented or corrected;

(iii) Entail final authority for the recommending or approving the collection, grant, exchange, loan, payment or

other use of property or funds of high individual or
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aggregate value, such that it impacts on national
economic policy;

- (iv) Entail responsibility for making selections, appointments or adverse determinations concerning persons having the access or performing any of the duties listed in (i) through (iii) above.

(c) Designation of Positions of Special Trust -

(1) Authority to Designate: The designation of Positions of Special Trust shall be made only by the heads of departments, agencies or major organizational components established by statute or Executive Order in accordance with the above criteria.

(2) Certification and Redesignation: The heads of organizations referred to in (1) of this subsection with respect to Positions of Special Trust:

- (i) shall certify in the records of the organization concerned the validity of the position designation at the time of designating each separate position; and
- (ii) shall maintain or cause to be maintained a central record of such positions and annually certify the validity of designation of such positions to the Civil Service Commission and
- (iii) shall approve any change in designation.

Section 7. Suitability Investigations.

(a) General - The appointment of each civilian officer or employee in any department or agency shall be made subject to an investigation

conducted for the purpose of developing information relevant to determining whether an individual is in conformance with the applicable standard specified in section 5 of this Order.

(b) Limits On Investigative Matters - Investigations shall be designed in so far as is possible to collect only as much information as is relevant and necessary for a proper suitability determination, to develop information that is timely and that avoids unnecessary inquiry into sensitive or private areas of personal behavior, and to report for use in final suitability determinations only information that is accurate and as fully corroborated as possible. Inquiries which have no relevance to a suitability determination should not be made. Questions regarding personal and domestic affairs, national origin, financial matters, and the status of physical health, fall in this category unless the question is relevant to the disqualification criteria of section 8 of this Order. The probing of a person's thoughts or beliefs and questions about his conduct, which have no suitability implications, are unwarranted. Further, religious beliefs and affiliations or beliefs and opinions regarding racial matters, political beliefs and affiliations of a nonsubversive nature, opinions regarding the constitutionality of legislative policies, and affiliation with labor unions or fraternal organizations are not proper subjects for such inquiries, except where this information constitutes a bonafide qualification or fitness requirement for a specific employment, unlawful or unconstitutional activities, or relates to the suitability disqualification factors of Section 8.

(c) Investigations Concerning General Standard Positions

- Investigations conducted for the purpose of determining the suitability of an individual for Federal Service in a General Standard Position shall be based exclusively on the suitability standard set

... shall be limited to matters relevant to reaching a determination under that standard, and shall ascertain that no adverse information exists which would preclude a favorable determination under that standard; further, such investigation shall consist of a national agency check, including a check of fingerprint files of the Federal Bureau of Investigation and, where appropriate, written inquiries to local law enforcement agencies, former employers and supervisors and references. However, upon the request of the head of the department or agency concerned, the Civil Service Commission may, in its discretion, authorize such less investigation as may meet the requirements of the national security or welfare with respect to per diem, intermittent, temporary or seasonal employees, or aliens employed outside the United States.

(d) Investigations Concerning Positions of Special Trust -

(1) Investigations conducted for the purpose of determining the suitability of an individual for Federal Service in a Position of Special Trust, herein after referred to as a Full Field Investigation, shall be based exclusively on the suitability standards set forth in sections 5(a) and (b) of this Order, shall be limited to matters relevant to reaching a determination under those standards, shall develop information positively affirming that the individual's conduct and character are such as meet the standards set forth in sections 5(a) and (b), and shall be completed prior to appointment; provided that when appointment is made prior to completion of the investigation the procedures prescribed in (2) of this subsection are followed.

the Executive Branch shall be personally conducted investigations with particular emphasis on the most recent five year period. These investigations shall be uniform and shall include, as a minimum, the elements listed below, unless special coverage has been requested by the head of the department or agency, and approved by the Civil Service Commission. Nothing in this Order shall be taken to limit the investigation if significant adverse information is developed outside of the most recent five year period.

(i) Basic Elements. The basic elements of a full field investigation are:

- o A national agency check as defined in section 2 plus Immigration and Naturalization Service files (on naturalized citizens) and State Department passport files (covering foreign travel).
- o Personal interviews with present and former employers; supervisors; fellow workers; references, when available; neighbors; school authorities; and other knowledgeable associates.
- o Checks of police, credit (when practical and justified), and other pertinent records as appropriate, such as FBI field offices, vital statistics (to resolve discrepancies), military service, and the like.

(ii) Personal Interviews. Personal interviews as appropriate, for the proximate 5-year period, should be scheduled with employers, supervisors,

period. Particular care shall be taken also to verify the fact of unemployment or self-employment claimed by the subject of investigation during the proximate 5-year period.

- (iii) Checks with educational sources. Significant education at a college level should be verified by a check of the school records. Secondary education should be investigated when the subject is young and has had no subsequent schooling. Personal interviews should be conducted with available witnesses such as school authorities, professors, and former students who were associated with the subject during recent schooling.
- (iv) Neighborhood investigation. Neighborhood investigation normally should be conducted on civilian employees and applicants to cover residence during the most recent three years. Testimony of neighbors before that period may be sought to verify periods of unemployment or self-employment, or to resolve questionable matters which have been raised from other sources.

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An investigation, completed with favorable results, conducted in conformance with the requirements of the Civil Service Commission, meeting the investigative requirement for any Position of Special Trust, even though a more extensive investigative scope has been authorized for such position by the Civil Service Commission, if the individual concerned subsequent to the completion of the investigation has been continuously employed in any Position of Special Trust for 5 years or more - subject to the provisions of subsection (j) below.

(2) In case of an emergency, a Position of Special Trust may be filled for a limited period by a person with respect to whom the required personal investigation has not been completed if the head of the department or agency personally determines that the waiver of such completion is necessary in the interest of national security or welfare based on the following criteria:

- (i) the position cannot remain unfilled without unacceptably adverse impact upon the mission of the organization.
- (ii) the applicant/nominee has such unique talent that no other person can fill the position.
- (iii) the priority of the program (assigned personally by head of agency or department) is so high that awaiting completion of investigation will result in program failure.

Such determination shall be made a part of the records of such department or agency. If such position is filled on this basis, the investigation must be requested not later than 3 days from entrance of the employee concerned on active duty and must be completed within 90 days from the date of waiver.

(3) Notwithstanding the limitations specified in subsection (1) above, investigations of applicants for Federal Trust may also include verification of special qualifications for the position involved as may be determined by the head of the department or agency.

(e) Investigative Expansion or Referral -

(1) Expansion: Should there develop at any stage of investigation information indicating that the employment of any such person may not be clearly consistent with the applicable standard set forth in section 5 the investigation shall be expanded to the extent necessary to enable the Civil Service Commission or head of the department or agency concerned to determine whether the individual is suitable for employment or retention in employment. Further, when significant adverse or questionable information is developed during the course of an investigation, the subject of the investigation, insofar as national security permits, shall be afforded an opportunity to affirm, refute or otherwise explain such information, prior to closing the investigation.

(2) Referral: There shall be referred promptly to the Federal Bureau of Investigation all investigations which develop information that an individual's conduct or activities are such as may fall within the investigative jurisdiction of the FBI.

(f) Investigative Procedures -

(1) Sources of Investigative Information: Persons conducting investigations authorized under this section shall collect information to the greatest extent practicable directly from the subject individual, but are authorized to seek additional information from any other appropriate source, including but not limited to:

(i) the parent(s) or guardian(s) of the person being investigated;

- (iii) federal, state, and local official government records, including conviction and sentencing information, court proceedings and probation records regarding criminal offenders;
- (iv) employment records;
- (v) medical records relevant to a determination under section 8(b)(2) (iii); and
- (vi) personal acquaintances.

The criminal offender information which the department or agency head concerned or his designee is authorized to obtain under this section includes, but is not limited to, all criminal history relating to arrests, indictments, information, or other formal criminal charges, dispositions, or a reason why no disposition is available, sentencing, and correctional supervision and release.

(2) Notice to the Individual: Prior to initiation of any investigation, the subject of the investigation shall be given written notice of:

- (i) The authority under which the investigation will be conducted;
- (ii) The scope of the investigation including an enumeration of the types of records and files to be checked and the type of individuals to be contacted;
- (iii) The principal purpose or purposes of the investigation;
- (iv) The individuals or organizations that will have access to the information;

adverse information;

(vi) A description of the subject's information rights, including access rights and rebuttal and appeal rights;

(vii) A description of the protection that the information will receive;

(viii) The effects on the individual, if any, of not providing all or any part of the requested information.

(3) Information to be Released by the Individual - The individual shall furnish a signed personal history statement, fingerprints of a quality acceptable to the Federal Bureau of Investigation and a signed release, as necessary, authorizing custodians of police, credit, education, employment and medical and similar records, to provide relevant record information to the investigative agency.

(4) Investigative Limitations With Respect to Privacy - In conducting investigations under the provisions of this Order, investigators shall:

(i) Not investigate any case or person except those assigned within their lawful duties;

(ii) Not interview witnesses where the testimony is likely to be overheard by others;

(iii) Always present credentials and inform witnesses of the reasons for the investigation; the use that will be made of the witnesses testimony; the eligibility of the testimony for confidential treatment; the effects on him, if any, of not providing all or any part of requested information;

(iv) Not furnish information, other than necessary identity data, or ask questions in such a manner as to indicate

that the investigator is in possession of derogatory information concerning the subject of the investigation;

- (v) Refrain from using, under any circumstances, covert or surreptitious investigative methods, devices or techniques including mail covers; physical or photographic surveillance; voice analyzers; inspection of trash; paid informants, wiretap or eavesdropping devices;
- (vi) Not investigate any case in which the investigator knows of circumstances which might adversely affect his fairness, impartiality or objectivity.
- (vii) Refrain, under any circumstances, from conducting physical searches of the subject or his property or making uninvited visits to the subject's home.
- (viii) Refrain from using a polygraph in any investigation conducted under this Order except that an executive agency which has a highly sensitive intelligence or counterintelligence mission directly affecting the national security may use the polygraph for employment and screening personnel investigations subject to the provisions of Appendix D of Chapter 736 of the Federal Personnel Manual. All other uses of a polygraph to screen applicants for or appointees to competitive positions are forbidden regardless of whether the polygraph examination is administered by the agency concerned or was obtained by that agency

(g) Investigative Responsibility - The investigation of persons entering or employed in the Federal Service, including experts and consultants however employed, shall primarily be the responsibility of the Civil Service Commission, except in cases in which the head of a department or agency assumes that responsibility pursuant to law or by agreement with the Civil Service Commission. A full report of investigation or notification of satisfactory completion thereof shall be furnished to the department or agency responsible for making the suitability determination.

(h) Investigative Support to Non-Executive Branch Federal Agencies - Legislative, judicial and quasi-governmental agencies, including the Government of the District of Columbia, that require investigations similar to those prescribed in this order may use the investigative facilities of the Civil Service Commission.

(i) Use of Prior Investigations - In order to avoid unnecessary duplication of effort and expense, an agency making a suitability determination pursuant to this Order shall make the fullest use of reports of prior investigation, to the extent that such prior investigation was based on the standards, suitability factors and investigative coverage requirements of this Order. If the prior investigation did not comply with this Order, such additional investigation as may be necessary shall be conducted.

(j) Reinvestigation.

(1) Incumbents. Once a person's suitability for Federal Service has been determined under the provisions of this order, he shall not be

reinvestigated for the same purpose unless information becomes available which raises reasonable doubt as to whether he continues to meet the

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applicable standard prescribed by section 5. However, the head of a department or agency authorized to establish Positions of Special Trust may with respect to such positions designate those which shall require re-investigation of the incumbent 5 years after employment, and once each succeeding 5 years, provided that such reinvestigation, in the absence of potentially disqualifying suitability information, includes as a maximum (1) requiring the incumbent to submit an updated statement of personal history to the appropriate office responsible for requesting such investigations, and (2) a review of the statement of personal history together with the personnel file of the incumbent, locally available previous reports of investigation concerning him, and any other locally available appropriate records. A determination shall then be made as to what further action is then appropriate, for example, a check of local police and credit records, a national agency check or an up-dated full field investigation.

(2) Former Employees. A former employee, who re-applies for employment, shall be investigated whenever available information raises a question as to whether the individual continues to meet the standard provided by section 5 or there has been a break in his employment by the Federal government greater than 12 months.

Section 8. Adjudication.

(a) Objectives - The objectives of the adjudication procedure shall be to determine whether, on the basis of available information, the individual's employment reasonably can be expected to promote the efficiency of the service and, in the case of a Positions of Special Trust and those requiring access to information classified in accordance with Executive Order 11652, to be clearly consistent with the national interests. The adjudication procedure is an effort to assess the probability of future conduct, whether willing or unwilling, deliberate or through negligence, which would impair

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the efficiency of the service or expose the national interests to hazard or jeopardy. It is an evaluation of risk which seeks to balance the possibility of prejudicial behavior against the consequences of failure in terms of the interests of the agency's mission or of the national welfare or security. Where the nature of the position is such that the consequences of failure are of little national import or are easily reparable, some doubts about an individual's suitability may be resolved in his or her favor. Where the consequences of failure pose a greater hazard to the national interests, however, such as with Positions of Special Trust, a smaller degree of doubt may warrant disqualification.

(b) Reasons for Disqualification -

(1) General: All applicants for or incumbents of positions in the Executive Branch must meet the standard of efficiency cited in Section 5(a). Specifically, an individual shall be disqualified for such employment if his or her conduct may reasonably be expected to interfere with or prevent his or her effective performance in the position sought or held, or if such conduct may reasonably be expected to interfere with or prevent effective performance by the employing agency of its duties and responsibilities. Any of the following factors may be considered a basis for disqualification:

- (i) Delinquency or misconduct in prior employment;
- (ii) Criminal, dishonest, infamous or notoriously disgraceful conduct;
- (iii) Intentional false statement or deception or fraud in examination or appointment;
- (iv) Habitual use of intoxicating beverages to excess;
- (v) Abuse of narcotics, drugs, or other controlled substances;

- (vii) Any statutory disqualification which makes the individual unfit for the service. These suitability factors have been promulgated by the Civil Service Commission which is authorized to make changes in these factors after consideration of the comments of the public and in coordination with the departments and agencies.

(2) Positions of Special Trust and General Standard Positions Requiring Access to Classified Information: An individual shall not be appointed to or retained in a Position of Special Trust unless such appointment or retention meets the standard cited in section 5(b). In addition to the factors specified in section 8(b)(1) above, the following factors shall be considered in determining whether the individual's employment meets the stricter standard for a Position of Special Trust and those General Standard Positions requiring access to information classified in accordance with Executive Order 11652.

- (i) Any facts, circumstances, or conduct which furnish reason to believe that the person concerned may be subjected to coercion, influence, or pressure which could cause him to act contrary to the national interest;
- (ii) Any facts, circumstances or conduct which indicates poor judgment, unreliability or untrustworthiness suggesting that the person concerned might fail to safeguard sensitive information, deliberately or inadvertently;
- (iii) Any illness, including any mental condition, of a nature which in the opinion of competent medical

authority may cause significant defect in the
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judgment of reliability of the person concerned,

with due regard to the transient or continuing
effect of the illness and the medical findings in
such case;

- (iv) Wanton or reckless disregard of public law, statutes, Executive Orders or willful disregard of security regulations;
- (v) Refusal or intentional failure to complete required personal history statements or security forms, or otherwise failing or refusing, in the course of an investigation, interrogation, or hearing, to answer, or to authorize others to answer, any pertinent questions regarding the matters set forth in subsection 8(b)(1) and (2) of this section; or
- (vi) A background which cannot be verified sufficiently to permit a positive demonstration of trustworthiness.

(c) Considerations in Weighing Evidence --

(1) General Guidelines:

While equity requires a degree of uniformity in the adjudication of individual cases, assuring fair and consistent evaluation of circumstances from one situation to the next, each case must be assessed on its own merits, taking into consideration all relevant facts, prior experience of similar cases, the nature of the position involved, including its level of responsibility and sensitivity, and the acceptability of risk. All information of record, both favorable and unfavorable, must be considered, and assessed in terms of completeness, relevance, seriousness, recency, and overall significance.

any decision must be a common sense one based on a demonstrable relationship between the facts and the standards cited in Section 5.

(2) Factors to be Considered:

Although there are certain circumstances which, in themselves, are obviously disqualifying, such as the use of a false identity or the various statutory restrictions on employment, adjudication of most forms of conduct must include consideration of all pertinent mitigating or aggravating factors, including the following:

- (i) the nature of the position involved, including the level of responsibility and sensitivity;
- (ii) the nature and seriousness of the conduct;
- (iii) the circumstances surrounding the conduct;
- (iv) the frequency and recency of the conduct;
- (v) the age of the individual, if the activity was as an adolescent;
- (vi) contributing social or environmental conditions;
- (vii) the voluntariness of the individual's participation;
- (viii) the absence or presence of rehabilitation or effort toward rehabilitation.

(3) Additional Factors to be Considered with regard to Position of Special Trust:

- (i) Refusal by an applicant for or an incumbent of a Position of Special Trust to furnish or to authorize others to furnish information deemed necessary and

relevant to a determination of his or her suitability

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for the particular position may warrant an inference

that the individual's employment cannot be found to be clearly consistent with the national interests.

- (ii) An individual employee who recognizes that he or she has become involved in an incident or situation, whether by virtue of some misconduct or indiscretion on his or her part which could adversely affect the national interests, and who promptly reports the matter to appropriate authority, shall receive a sympathetic response. To the extent consistent with applicable law or regulation and other criteria of this order, the individual's voluntariness and candor in providing such information shall be considered as a mitigating circumstance and, as appropriate, evidence of a willingness to rehabilitate.

(4) Factors not to be Considered:

- (i) Criminal history information which does not show final disposition of a charge must be investigated further to ascertain the disposition and reasons therefor. No adverse determination shall be made except on the basis of information which is as complete as circumstances allow.
- (ii) No adverse determination shall be made on the basis of how an individual has exercised his First Amendment rights, which include but are not limited to, religious and political beliefs, freedom of speech and of the press, and freedom of assembly and petition. Such factors are

deemed irrelevant, in the absence of any indication of
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violation of law or unconstitutional activity, or incompatibility with the standards of this Order, in which

case it is the illegal activity or incompatibility and not the mere exercise of right which becomes relevant.

(d) Timely Adjudication - Adjudication should be completed in a timely fashion and in no event more than 90 days after the receipt of the final investigative report.

(e) Notice to the Individual - The individual shall be informed of the completion of any investigation conducted pursuant to this Order and shall be informed of the final suitability determination.

Section 9. Due Process and Adverse Determination Procedures.

(a) Due Process Policy - No person may be denied eligibility for appointment or appointment in the Federal service or finally removed from a position in the Federal service by the Civil Service Commission or a department or agency for failure to meet the standards prescribed by Section 5 of this Order unless he has been afforded such due process as is provided for in this section.

(b) Applicants

(1) No person may be denied eligibility for appointment or appointment in the Federal service, competitive or excepted service, by the Civil Service Commission or by the head of a department or agency for failure to meet the standards prescribed by section 5, unless the person has been given:

- (i) a written statement of the reasons upon which such denial is to be based in sufficient detail to afford an opportunity to respond and offer comments or other evidence relative to the issues;

(11) a reasonable opportunity to make such response;
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(iii) a letter of notification of the determination

which, if adverse, shall cite the specific reasons
upon which the determination is based; and

(iv) a written notification of the right to appeal the
adverse determination to the Federal Employee Appeal
Authority.

(c) Incumbents

No person may be finally removed from employment, competitive or excepted service, by the Civil Service Commission or by the head of a department or agency for failure to meet the standards prescribed by section 5 unless appropriate Civil Service removal procedures have been followed for those persons in the competitive service or the established agency and appropriate Civil Service Commission removal procedures have been followed for those persons in the excepted service, except that when the head of the agency determines that the protection of national security interests so require the provision of section 10 shall be applied.

Section 10. Procedures Concerning Positions Which Involve National Security

Interests. In furtherance of the objectives of the Act of August 26, 1950 (5 U.S.C. 7531, et seq.), whenever the continued employment of an individual in the Federal service, or his access to classified information, is found to be not consistent with national security interests, the head of the agency shall take appropriate action in accordance with the following procedures.

(a) Suspension from employment or access to classified information.

The head of a department or agency shall, when deemed necessary to the national security, suspend from employment any civilian officer or employee, competitive or excepted service, or shall suspend the individual's access to classified information, provided that, to the extent that such agency head

determines the national security permits, the employee shall be notified of the reasons for the suspension and within 30 days after such notification any such person shall have an opportunity to submit any comments or other evidence relative to the issues. However, within 120 days, if the determination is adverse, the head of the agency shall take further action under one of the following procedures.

(b) Removal from employment or revocation of security clearance.

If the head of a department or agency, based on the circumstances of the case, determines action should be initiated to finally remove an individual from employment or to revoke the individual's clearance for access to classified information, he shall afford the individual the following:

(i) a written statement of the reasons upon which such removal or revocation of clearance for access to classified information is to be based in such detail as national security permits and as would afford him an opportunity to respond and offer comments or other evidence relative to the issues;

(ii) a reasonable opportunity to make such response;

(iii) after he has made a response, the form or sufficiency of which may be prescribed by regulations issued by the Civil Service Commission or the head of the department or agency concerned, an opportunity to appear personally before the Commission or the head of the department or agency concerned or appropriate designee for the purpose of supporting his suitability for retention in the position concerned, or eligibility for clearance for access to classified information and to present evidence in his behalf;

(iv) a reasonable time to prepare for that appearance;

(v) an opportunity to be represented by counsel;

(vi) an opportunity to cross-examine persons either orally or through written interrogatories on matters relevant to his suitability for retention in the position concerned or eligibility for clearance;

(vii) a review of his case by the agency head or his designee, before a determination adverse to the employee is made final; and

(viii) a written notice of the final decision in his case which, if adverse, shall specify whether the Commission or the head of the department or agency found for or against him with respect to each allegation in the statement of reasons.

The employee concerned shall be afforded an opportunity to cross-examine persons who have made oral or written statements adverse to the employee relating to the controverted issue except that any such statement may be received and considered without affording such opportunity in the circumstances described in either of the following instances:

(ix) the head of the department supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of this identity would be substantially harmful to the national interest.

(x) the head of the department concerned or his special designee for that particular purpose has preliminarily determined, after considering information furnished by the investigative agency involved as to the reliability of the person and the accuracy of the statement concerned, that the statement concerned appears to be reliable and material, and the head of the department or such special designee has determined that failure to receive and consider such statement would, in

view of the nature of the position involved, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify (1) due to death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the applicant, or (2) due to some other cause determined by the head of the department to be good and sufficient.

Whenever procedures under paragraphs (ix) or (x) of this subsection are used (1) the applicant shall be given a summary of the information which shall be as comprehensive and detailed as the national security permits, (2) appropriate consideration shall be accorded to the fact that the applicant did not have an opportunity to cross-examine such person or persons, and (3) a final determination adverse to the applicant shall be made only by the head of the department based upon his personal review of the case.

(c) Reassignment to a position which does not involve national security interests. Nothing in this order shall be deemed to limit or affect the responsibility and authority of any head of a department or agency when, in his absolute discretion, he deems it necessary in the interest of national security to reassign a person to a General Standard Position from a Position of Special Trust (National Security) provided that the reassignment is (1) to a position of the same grade, (2) comparable duties and (3) within the commuting area of the position from which the person is reassigned or, as appropriate, within the area of the agency headquarters. In all such reassignment cases the reassignee shall be given:

(1) a written statement of the adverse information upon which the reassignment is to be based in such detail as national security permits and

in sufficient detail to afford an opportunity to respond and offer comments
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or other evidence relative to the issues;

(2) a reasonable opportunity to make such a response;

(3) a letter of notification of the decision, if reassignment is decided, which shall cite the specific reasons, to the extent national security permits, upon which the decision is based.

(d) Reserved Authority Nothing in this order shall be deemed to limit or affect the responsibility and powers of the head of a department or agency to deny or revoke access to a specific category of information classified in accordance with Executive Order 11652 if the security of the nation so requires. Such authority may not be delegated and may be exercised only when the head of a department or agency determines that the procedures prescribed in section 9 or subsections (a)(b) or (c) of this section cannot be invoked consistently with the national security and such determination shall be conclusive.

Section 11. Reinstatement, Restoration to Duty and Re-employment.

Any person whose employment is suspended or terminated under the authority granted to heads of departments and agencies in accordance with section 10 of this order shall not be reinstated or restored to duty or re-employed in the same department or agency and shall not be re-employed in any other agency or department, unless the head of the department or agency concerned finds that such reinstatement, restoration or re-employment is consistent with the standards of section 5a and b; such findings shall be made a part of the records of such department or agency. However, no person whose employment has been terminated under such authority thereafter may be employed by any other department or agency except after a determination by the Commission that such person is eligible for such employment.

Section 12. Review of Adverse or Questionable Information Arising
Subsequent to Favorable Suitability Determination.

Whenever there is developed or received by any department or agency information indicating that the retention of any civilian officer or employee in the Federal Service may not be consistent with the standards set forth in sections 5(a) and (b), such information shall be forwarded to the head of the department or agency concerned or his designee who, after such investigation as may be appropriate, shall review or cause to be reviewed the adverse or questionable information. If after such review, it is the determination of the head of the department or agency that the retention of the person concerned may not be consistent with the appropriate standard(s) set forth in section 5(a) or (b), he shall initiate action under the provisions of section 9 or 10, as appropriate.

Section 13. Program Management.

a. General Policy Oversight - Within the Executive Office of the President, the National Security Council and the Office of Management and Budget shall exercise oversight of the Civil Service Commission operation of the Federal Personnel Suitability Investigation and Adjudication Program and shall be responsible for providing policy guidance concerning that program and shall effect the necessary oversight needed to assure that implementation of the policies set forth herein by the departments and agencies is consistent with the interests of the nation and the constitutional and civil rights of the individuals concerned. A program directive shall be issued by the Civil Service Commission within 90 days of the effective date of this order.

(1) Department and Agency Systems In furtherance of the Federal Civilian Personnel Suitability Investigation and Adjudication Program the head of each department and agency established by statute or Executive Order shall be responsible for maintaining a centrally managed personnel suitability, adjudication and review system to insure that the employment and retention of each civilian officer or employee, in the competitive or excepted service, is consistent with the suitability standards of this order.

(2) Implementing Regulations: The heads of the departments and agencies shall, within 90 days of the effective date of the directive cited in subsection (a) of this section, issue appropriate regulations implementing the policies and procedures of this Order.

(c) Standardized Qualifications and Training of Program Personnel: The Civil Service Commission, in coordination with other appropriate agencies, shall prescribe minimum standards for the selection and training of Federal personnel investigators, adjudicators and supervisory personnel in these activities.

(d) Index of Investigations:

- (i) In order to avoid unnecessary and duplicative investigation there shall be established and maintained in the Civil Service Commission an index covering all persons as to whom personnel suitability investigations have been conducted under this order by the Commission or any department or agency of the Executive Branch. The index shall contain the name of each person investigated,

adequate identifying data concerning such person,

identification of the department or agency which has conducted an investigation concerning the person considered, or has suspended or terminated the employment of such person under the authority granted to the heads of departments and agencies by or in accordance with this order or said Act of August 26, 1950.

(ii) The heads of all departments and agencies shall furnish to the Civil Service Commission information as prescribed by the Commission appropriate for the maintenance of this index.

(iii) Each department or agency shall maintain a record of the action taken as a result of any investigation conducted by or at the request of such department or agency in accordance with this Order.

(e) Control, Release and Use of Investigative Reports:

(i) Control of Reports - Reports of investigation developed for the purpose of this order shall, upon rendering of the final determination, be filed at a place designated by the Commission or the head of the department or agency which conducted the investigation, as the case may be, under conditions which will protect the privacy of the persons concerned and the interests of the nation. The reports and other investigative material and information developed by investigation conducted under this order shall remain the property of the agency which conducted the investigation.

(ii) Release of Reports - Except as otherwise authorized by law or Executive Order, no release of such reports will be afforded under procedures prescribed by the investigative agency concerned in accordance with Executive Order 11652, the Freedom of Information Act, the Privacy Act of 1974 and other applicable laws, rules and regulations.

- (iii) Use of Reports - Except as otherwise authorized by law or Executive Order such reports shall be used only to (1) determine an individual's suitability for Federal Service as provided for in this Order or (2) eligibility for access to classified information; except that such reports may be used to compile management and statistical information necessary for the effective management of the Federal Civilian Personnel Suitability Investigation and Adjudication Program. Such reports, or information from them, shall not be used for the purpose of determining an individual's eligibility for promotion, selection for training or qualification for assignments not involving Positions of Special Trust.
- (iv) Disposal of Investigative Reports: Investigation reports prepared as provided by this Order shall be destroyed fifteen years after the last investigative activity unless they contain significant adverse information in which case they shall be retained twenty five years after the last investigative activity.

(v) Retention of Reports - Reports shall be maintained with
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only such information as is necessarily relevant and

timely to accomplish the objectives of this order and
sufficiently corroborated to assure accuracy. Reports
concerning incumbents will be audited each time they are used,
to insure that the material contained in the reports is
necessarily accurate, relevant, timely and complete. In conformance
with the Federal Records Act and other statutes and
orders governing record retention, agencies will adopt
and publish purge schedules for all reports compiled
under this order to promote the retention of necessary
relevant and timely information.

(f) Standard Forms: In order to avoid unnecessary proliferation
of forms, the Civil Service Commission, in coordination with other ap-
propriate agencies, shall develop and prescribe standard forms which
shall be used uniformly by all departments and agencies in implementing
the Federal Civilian Personnel Suitability Investigation and Adjudication
Program to include personal history statements, privacy statements,
release authorizations, investigative requests, investigative reports,
testimony vouchers, adjudicative work sheets, suitability determination
memoranda, suitability determination records, and notification statements
to the subjects of investigations.

(g) Clearing House for Program Management Information:
The Civil Service Commission, operating under the guidance of the Executive
Office of the President shall, establish a clearing house for information
vital to effective program management such as legislative initiatives

and hearings, court and administrative hearing decisions and similar matters.

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(h) Program Review: In order to assure full and continuing compliance with the provisions of this order, the Civil Service Commission, with the cooperation of the agencies and departments, shall effect continuing review of the manner in which the order is being implemented throughout the Federal Government and shall submit to the Executive Office of the President for review by the National Security Council and the Office of Management and Budget an annual report with recommendations to correct any deficiencies in the program which are inconsistent with the national interests or rights of the individual under the Constitution, the laws of the United States, or this Order. In addition, the Civil Service Commission shall develop and prescribe statistical reporting procedures designed to facilitate analysis of the effectiveness of the investigative and adjudicative processes of this Order.

(i) Annual Certification: In addition to the annual certification required by section 6(c)(2)(ii) of this Order, each department and agency shall make an annual report to the Civil Service Commission of the waivers granted under section 7(d)(2) of this Order and such information shall be included in the report cited in (h) above.

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